

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

No. 13,262

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

FRANK V. DILATUSH, APPELLANT,

v.

CHARLES E. WILSON, Secretary of Defense, Et Al,
APPELLEES.

**Appeal From the United States District Court for
the District of Columbia.**

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED MAY 18 1956

Joseph W. Stewart

CLERK

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No. 13,262

QUESTION PRESENTED

WHETHER IN EFFECTING THE DISCHARGE OF THE APPELLANT FROM HIS GOVERNMENTAL POSITION THE APPELLEES COMPLIED WITH THE PROCEDURAL REQUIREMENTS OF THE VETERANS PREFERENCE ACT OF JUNE 27, 1944.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,262

FRANK V. DILATUSH, APPELLANT,

v.

CHARLES E. WILSON, Secretary of Defense, Et Al.,
APPELLEES.

Appeal From the United States District Court for
the District of Columbia.

BRIEF OF THE APPELLANT JURISDICTIONAL STATEMENT

This action was commenced in the United States District Court for the District of Columbia against the Secretary of Defense, the Secretary of the Air Forces, and the members of the United States Civil Service Commission. The action was in the nature of a suit for a declaratory judgment fixing and determining the rights of the Appellant as a civil service employee of the United States, and for a mandatory injunction to require the defendants to restore him to his position and grade in governmental service from which he had been illegally removed.

Judgment for the Appellees was entered on December 5, 1955 (A.34) and appeal was taken within sixty days thereafter on January 23, 1956 (A.35) Jurisdiction of this appeal is granted under Title 28, Section 1291 of the United States Code.

STATEMENT OF THE CASE

The Appellant filed this suit against the Secretary of Defense, the Secretary of the Air Forces, and the members of the United States Civil Service Commission praying for a declaratory judgment, and for a mandatory injunction requiring the defendants to restore him to his position in governmental service. After the suit was filed, the defendant, Harold E. Talbott, resigned as Secretary of the Air Forces, and the present Secretary of the Air Forces, Donald A. Quarles, was properly substituted as a party-defendant in lieu and place of Harold E. Talbott.

The complaint alleged (A.4) that the Appellant enlisted in the United States Army on December 5, 1940, and that thereafter he served continuously until the date of his honorable discharge therefrom on November 29, 1945. That having previously qualified, as was required in accordance with the Civil Service regulations, he entered the employment of the United States as a civilian employee on or about December 12, 1951 at Wright-Patterson Material Air Field at Dayton, Ohio as a Contract Specialist, GS-7 and successfully completed his probational period of one year, and thereafter continued in such employment until his illegal and unlawful discharge from governmental service on May 28, 1953.

The complaint further alleged that he was a veteran preference eligible as that term is defined under Section 2 of the Veterans Preference Act of June 27, 1944 (5 U.S.C. 851) and was entitled to all of the rights, benefits and privileges of that Act including the rights under Section 14 of the Veterans Preference Act (5 U.S.C. 863). In the Complaint the citation of Section 14 is erroneous as it should have been Title 5 U.S.C. 863 instead of 861 as alleged. However, Section 14 of the Act is the correct citation of the section of the Veterans Preference Act.

The complaint further alleges that on March 13, 1953 certain pretended charges against the Appellant were filed against him. (A.5) The complaint alleges (A.5) that the said pretended charges were not specific, nor in detail, as required by the provisions of Section 14 of the Veterans Preference Act in that nowhere was it alleged in the said charges the time, day, month or year, or any approximate time, day or year, that the said Appellant deposited certain official papers in a waste paper box, nor was it alleged that the place where the said waste paper basket was located, or what employees saw and observed the Appellant depositing the said official papers in the waste basket. The complaint further alleges that no findings were made by C. E. Gray, Civilian Personnel Officer, Personnel Branch Directorate Base Personnel and Training (A.6) and that the only finding on the alleged pretended charges was "At no time have you made a direct answer to the charges or offered any information sufficient to nullify the charges". The complaint further alleged (A.6) that the said officials without any proof of the charges against the Appellant held that the mere statement of the charges was sufficient to constitute the guilt of the Appellant. The complaint was duly verified. (A.8).

The Appellant was an attorney at law, and had to be such in order to qualify for the position which he held. He was therefore charged with destruction of government property. The Appellant fully exhausted any administrative right of appeal to the Civil Service Commission.

The answer filed on behalf of the Appellees admitted that the Appellant was a veteran Preference eligible (paragraph nine A.9).

The Appellees filed a motion for a summary judgment (A.11). The Appellees attached to this motion a copy

of the said pretended charges (A. 15, 16, 17, 18, 19, 20). The Appellant was removed (A. 21, 22, 23, 23).

The Appellant likewise moved for a summary judgment (A.24). In support of the Appellant's motion his affidavit was attached (A. 25, 26). The motion was predicated upon the verified complaint, the affidavit of the Appellant, and copy of the said pretended charges filed against the Appellant, (A. 27, 28, 29, 30, 31) and the memorandum of the alleged removal (A. 32, 33, 34). There has been some duplication of the memorandums but the same were printed in order that the Court will see that the alleged charges filed against the Appellant, and the alleged findings, are in accord.

The Court below sustained the motion of the Appellees for a summary judgment, and denied the motion of the Appellant (A.34).

This appeal therefore followed.

STATEMENT OF POINTS ON APPEAL.

1. That the Court erred in sustaining the defendants' motion for summary judgment and denying the plaintiff's motion for summary judgment.

2. That the Court erred in holding that charges filed against the plaintiff were specific and in detail as required by Section 14 of the Veterans Preference Act of June 27, 1944 (5 U.S.C. 863).

3. That the Court erred in finding that there had been a complete compliance with Section 14 of the Veterans Preference Act (5 U.S.C. 863) in that no finding was made by the proper officials of the Department of Defense on the said alleged charges against the plaintiff, and that his discharge was such cause as would promote the efficiency of the service the only finding being made

was that "At no time have you made a direct answer to the charges or offered any information sufficient to nullify the charges", which said alleged finding is not a compliance with the statutory provisions of Section 14, supra.

4. For other and further errors apparent of record.

PERTINENT STATUTES

5 U.S.C. 863

"No permanent or indefinite preference eligible, who had completed a probationary or trial period employed in the civil service, or in any establishment, agency, bureau, administration, project, or department, hereinbefore preferred to shall be discharged, suspended for more than thirty days, furloughed without pay, reduced in rank or compensation, or debarred for future appointment except for such cause as will promote the efficiency of the service and for reasons given in writing, and the person whose discharge, suspension for more than thirty days, furlough without pay, or reduction in rank or compensation is sought shall have at least thirty days' advance written notice (except where there is reasonable cause to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed), stating any and all reasons, *specifically and in detail*, for any such proposed action; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answer, and shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be made in writing within a reasonable length of time after the date of receipt of notice of such adverse decision: Provided, That such preference eligible shall have the right to make a personal appearance, or an appearance through a designated representative, in accordance with such reasonable rules and

regulations as may be issued by the Civil Service Commission; after investigation and consideration of the evidence submitted, the Civil Service Commission shall submit its findings and recommendations to the proper administrative office and shall send copies of the same to the appellant or to his designated representative, and it shall be mandatory for such administrative officer to take such corrective action as the Commission finally recommends: Provided further, That the Civil Service Commission may declare any such preference eligible who may have been dismissed or furloughed without pay to be eligible for the provisions of section 864 of this title. (June 27, 1944, c. 287, Sec. 14, 58 Stat. 390)

ARGUMENT AND BRIEF

The statement of points on appeal from 1 to 4 inclusive will be collectively considered. This Court has held that it will not review the evidence to support charges against a government employee but will consider procedural defects.

The Appellant does specifically attack very vigorously the contention that the officials of the Air Forces of the United States complied with the procedural requirements of the statute.

Section 14 of the Veterans Preference Act, set forth herein at page 5, provided that no veteran preference eligible such as this Appellant may be discharged from his governmental position without charges being filed against him, and that they must be *specific and in detail*.

The Appellant is an attorney at law and had to be such to be a Contract Specialist as he was dealing with contracts involving the government and private industry. He is charged primarily with a crime of destroying official government papers and property. The government documents in question were alleged to be one date June

13, 1952, and one dated April 19, 1952, and another dated May 8, 1952,. There were also a number of other alleged documents mentioned in the pretended letter of charges (A. 27, 28, 29, 30, 31).

The alleged findings of the charges are set forth in Appendix (A. 31, 32, 33, 34). In these alleged findings (A.33) the following appears, "It is noted that in your letters of reply to the charges you have stressed the fact that you are an attorney. Your education and legal experience make the offense especially serious."

Yet no finding was made that he actually destroyed the documents in question, or that his removal was for such cause as would promote the efficiency of the service.

These findings were necessary under express provisions of Section 14 of the Veterans Preference Act, *supra*.

This Court has already held that such findings are necessary to remove a civil service employee who does not have veterans preference under Title 5 U.S.C. 652.

Mulligan v Andrews, 108 Fed. Supp. 296, reversed by this Court 211 Fed. 2d 28, 93 U.S. App. D.C. 375.

See also the case of *O'Brien v Harrington* No. 12,298 decided by this Court on April 12, 1956.

The more serious defects of the procedural errors is in the plain fact that the charges against the Appellant are not specific and in detail.

The Appellant is being charged with what amounts to a crime against the United States, yet he is not told the time, day, week or the year in which the alleged destruction of the public documents took place. He further was not informed who were the persons "who observed" him tearing up the documents in question and he certainly was entitled to know who such employees were and how they knew that he was destroying public documents in question.

This Court has had occasion in several cases to pass upon the procedural defects in cases where the employee has been charged with a crime. In all such cases this Court has held that the charges must be specific and in detail even though such employees do not come under the provisions of the Veterans Preference Act.

See *Deak v Pace*, 185 F.2d 997, 88 U.S. App. D.C. 50

The provisions of Section 652, of Title 5 of the United States Code, does not provide as in the provisions of Section 14 of the Veterans Preference Act that the charges be specific and in detail, yet this Court has held that despite that fact the charges must be specific and in detail.

In cases involving what might be construed as criminal charges against an employee this Court has held that while the language of the charges does not have to have the nicety of an indictment the charges must be sufficient to put the employee on notice of the time and the place of such occurrence.

In the case of *Manning v Stevens*, 208 F.2d 827, 93 U.S. App. D.C. 225, this Court held that an employee charged with abnormal sex practices was entitled to know the time and the place of such occurrences, and that the charges against him were not specific and in detail as required by Section 14, *supra*. The Appellant in this case is a veteran preference eligible, the same status as *Manning* occupied.

The case of *Money v Anderson*, Secretary of the Navy, decided by this Court on November 5, 1953, 208 F.2d 34, 93 U.S. App. D.C. 130, also is in point. In that case *Money* was charged with certain alleged improper relations with the members of the female sex. This Court held that the charge should include the names of the women involved, the places, and the approximate dates

of the alleged molestations. This Court held that this was required under Section 652 of Title 5 of the United States Code. Among other things, this Court said:

"We hold the charges lack the specificity required by the applicable removal procedure. Charges preferred for removal must be specific enough to provide a fair opportunity for refutation by the innocent who have no knowledge of the conduct charged, as well as the guilty *who do possess such knowledge.*"

Applying the principal laid down by this Court in the cases of *Deak v Pace*, *Manning v Stevens*, and *Money v Anderson*, *supra*, to the facts in this case it would appear that the alleged charges filed against the Appellant certainly did not comply with the statute requiring them to be specific and in detail. He certainly was entitled to know the time, day or year that the alleged conduct took place, and he was also entitled to know the names of the persons who "observed him" doing the acts complained of. Furthermore, there should have been a finding that the Appellant's discharge from government employment was for "such cause as will promote the efficiency of the service", and a finding on the charges that he actually did what he was charged with having done. No such finding appears in the record.

CONCLUSION

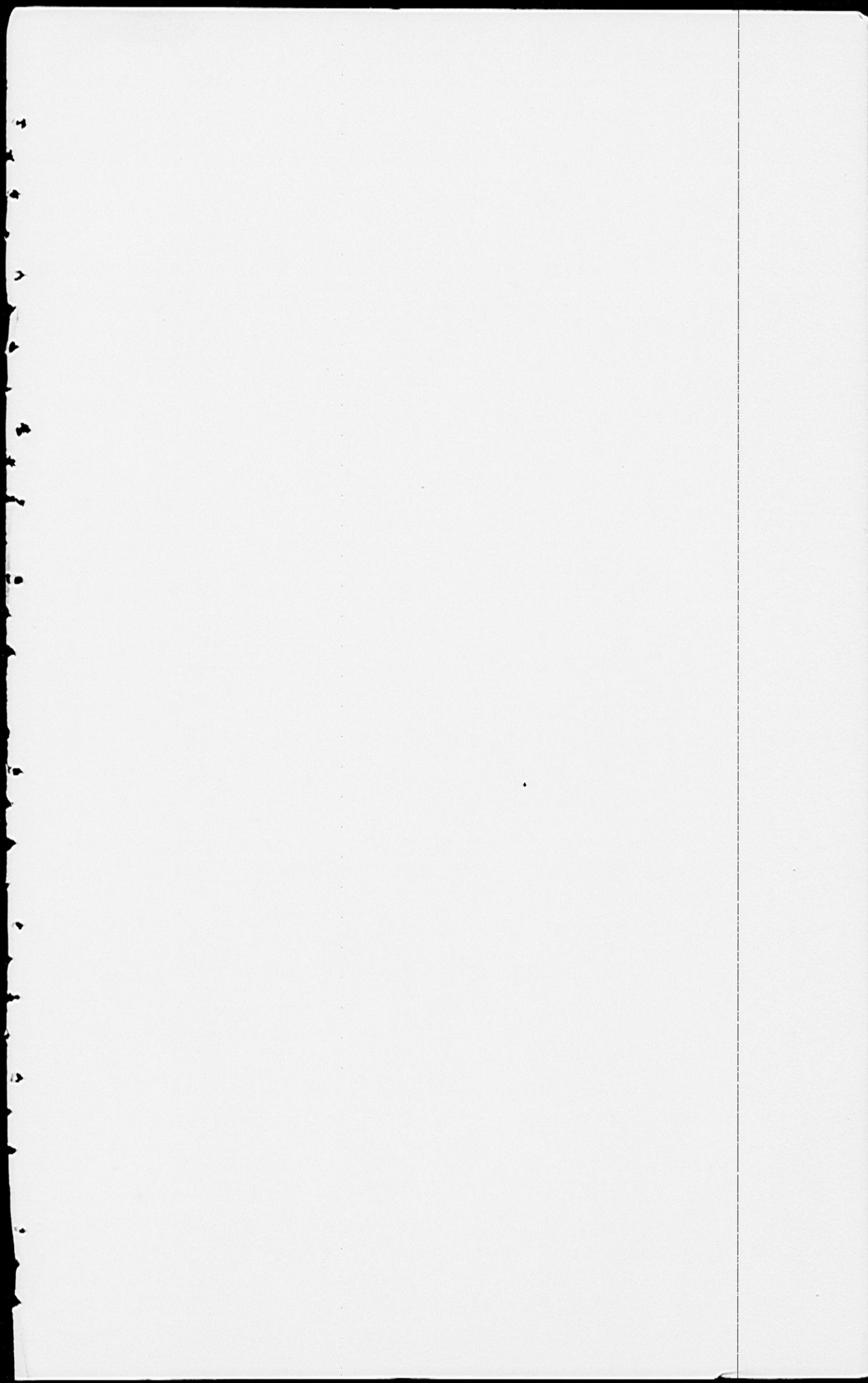
For the reasons herein stated judgment in this case should be reversed, and this cause remanded to the District Court for further action in accordance with the orders of this Court.

Respectfully submitted,

CLAUDE L. DAWSON
1012 - 14th Street, N.W.,
Washington 5, D. C.

DON E. SPROUL
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Dayton 2, Ohio.

Attorneys for the Appellant.



APPENDIX

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,262, April Term, 1956

FRANK V. DILATUSH,

Appellant,

v.

CHARLES E. WILSON, SECRETARY OF DEFENSE,

PHILIP YOUNG, CHAIRMAN,

U. S. CIVIL SERVICE COMMISSION, ET AL.,

Appellees.

Appeal From the United States District Court
for the District of Columbia, Filed April 9, 1956

1 Filed April 4, 1955, Harry M. Hull, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
FRANK V. DILATUSH, 325 Shaw Avenue,
Dayton 5, Ohio

Plaintiff,

v.

CHARLES E. WILSON, Secretary of Defense
Washington, D. C.
HAROLD E. TALBOTT, Secretary of the Air Forces
Washington, D. C.
PHILIP YOUNG, Chairman, U. S. Civil Service
Commission, Washington, D. C.
GEORGE M. MOORE, Member, U. S. Civil Service
Commission, Washington, D. C.

and

FREDERICK J. LAWTON, Member, U. S. Civil
Service Commission, Washington, D. C.

Defendants.

CIVIL ACTION NO. 1508-'55

Suit for a Declaratory Judgment fixing and determining the rights of the plaintiff as a veteran preference eligible in governmental employment of the United States; for a mandatory injunction restoring the plaintiff to a position and grade in governmental service from which he has been illegally separated.

The plaintiff for his cause of action complains of the defendants and alleges:

1. That the plaintiff is a citizen of the United States, and a resident of the State of Ohio, and brings this action in his own right. That the value of the objective

for which this action is brought exceeds the sum of Three Thousand Dollars exclusive of interest and costs.

2. That the defendant, Charles E. Wilson, is the duly appointed, acting and qualified Secretary of Defense of the United States, and is sued in that capacity only.

2 3. That the defendant, Harold E. Talbott, is the duly appointed, acting and qualified Secretary of the Air Forces of the United States, and is sued in that capacity only.

4. That the defendants, Philip Young, George M. Moore and Frederick J. Lawton are the duly appointed, acting and qualified members of the United States Civil Service Commission and constitute the entire membership of the said Commission, and that they, and each of them, are sued in their official capacities only.

5. That the defendant, Charles E. Wilson, in his capacity as Secretary of Defense has under his direction, supervision and control, all of the military and civilian personnel of the Department of Defense including those persons who are so employed in Air Material Command at Wright-Patterson Air Force Base located at Dayton, Ohio. That the defendant, Harold E. Talbott, in his official capacity, has direct supervision over the employees of the Wright-Patterson Air Force Base at Dayton, Ohio subject only to the orders and directions of Charles E. Wilson as Secretary of National Defense.

6. That the defendants, Philip Young, George M. Moore and Frederick J. Lawton in their official capacities are charged by law with the administration of the so-called Civil Service Laws of the United States relating to the qualification, appointment and discharge of civilian employees of the United States such as this plaintiff.

7. The plaintiff further alleges that the said defendants, Charles E. Wilson and Harold E. Talbott in their

official capacities, do not have an absolute discretion in the matter of appointment and discharge of civilian employees under their supervision and control, but they at all times are required to procure their civilian personnel from the United States Civil Service Commission from lists furnished by the said Commission of personnel who have been found to be duly qualified for said civilian positions in accordance with the laws of the United States, the lawful regulations of the United States Civil Service Commission, and the Executive Orders of the President of the United States.

3 8. The plaintiff further alleges that he enlisted in the United States Army on December 5, 1940, and thereafter served continuously until the date of his honorable discharge therefrom on November 29, 1945. That having previously qualified in accordance with the rules and regulations of the United States Civil Service Commission, he entered the employment of the United States on or about December 12, 1951 at Wright-Patterson Material Field at Dayton, Ohio as a contract Specialist GS-7 and successfully completed his probational period of one year, and that thereafter he continued in such employment until his illegal and unlawful discharge from governmental service on May 28, 1953.

9. The plaintiff further alleges that at the time of his employment as alleged in paragraph 8 hereof, he was a veteran preference eligible, as that term is defined in the Veterans Preference Act of June 27, 1944 (5 U.S.C. 851), and entitled to all of the rights, benefits and privileges of an honorably discharged soldier of the United States in civilian employment of the United States under which he could not be discharged except for such cause as would promote the efficiency of the service, and on charges filed against him which conformed with Section 14 of the Veterans Preference Act of June 27, 1944 (5 U.S.C. 861) which required that any such charges filed should be specific and in detail.

10. The plaintiff further alleges that on March 13, 1953, certain pretended and alleged charges were filed against him by one Charles F. Burley, Lt. Colonel, Chief Aeronautical Branch, Procurement Section at Wright-Patterson field claiming, or pretending to claim, that the plaintiff had deposited certain papers in a waste basket in an office, but that the said charges were not specific nor in detail as required by the said Section 14 of the Veterans Preference Act for the reason, that nowhere in said charges was it alleged the time, day, or the year, or any approximate time, day or year that the plaintiff had deposited the papers in a waste basket, or the place where the waste basket was located where the said papers in question had been so deposited, and that the charges in question made against the plaintiff were so vague in nature and so lacking in specificity that the plaintiff was only able to deny them in toto. The

4 plaintiff alleges that the said pretended and alleged charges filed against him did not meet the requirements of Section 14 of the Veterans Preference Act of June 27, 1944 (5 U.S.C. 861).

11. The plaintiff further alleges that on May 28, 1953 he received a notification from C. E. Gray, Chief Civilian Personnel Branch, Directorate, Base Personnel and Training at Wright-Patterson Field that he was discharged from his employment. The plaintiff further alleges that no findings were made that the alleged and pretended charges were found to be true, or that the plaintiff was guilty of the charges made, but the sole finding made was "At no time have you made a direct answer to the charges or offered any information sufficient to nullify the charges". The said officials, without proof of any of the charges, held that the mere statement of the charges were sufficient to constitute the guilt of the plaintiff, and that no finding was made by C. E. Gray, Civilian Personnel Branch Directorate, Base Personnel

and Training, the official who initiated the said alleged and pretended charges that the discharge of the plaintiff was for such cause as will promote the efficiency of the service as required by Section 14 of the Veterans Preference Act of June 27, 1944 (5 U.S.C. 861).

12. The plaintiff therefore alleges that because of the matters and things herein alleged in paragraphs 9, 10, 11 of this complain, his discharge from employment with the United States government as herein alleged was illegal and unlawful, and that he has not ever been legally separated from his employment with the United States government.

13. The plaintiff further alleges that after his illegal and unlawful discharge from the employment of the United States on May 28, 1953, he duly appealed to the United States Civil Service Commission in accordance with Section 14 of the Veterans Preference Act, and fully exhausted any administrative right of appeal, and that the said United States Civil Service Commission denied in all respects his appeal and rubber-stamped the illegal and unlawful discharge of the plaintiff, and plaintiff was advised under date of January 10, 1955 that their decision was final.

5 14. The plaintiff alleges that he has diligently prosecuted his claim that he was illegally and unlawfully discharged from his governmental employment, and that unless this Court grants the relief prayed for he will be without remedy. That the plaintiff has no speedy, adequate remedy at law.

WHEREFORE, the plaintiff prays:

1. That due process issue commanding and directing the defendants, and each of them, to appear and answer this bill of complaint.

2. That the Court enter a declaratory judgment decreeing and declaring that the plaintiff's discharge from his governmental position was illegal and unlawful, and ordering that he be restored to the position and grade from which he was discharged as of the date of his illegal and unlawful discharge, together with all rights, benefits and privileges flowing from a continuity of service from that date until the date of judgment.

3. That a mandatory injunction issue to the said defendants directing and ordering them to carry out the provisions of any declaratory judgment entered against the said defendants, and each of them.

4. That the plaintiff have such other and further relief as to the Court may appear to be equitable and just.

/s/ Frank V. Dilatush
 Frank V. Dilatush
Plaintiff.

/s/ Don E. Sproul
 Don E. Sproul, of counsel
 for the plaintiff.
 1030 Third National Bldg.,
 Dayton 2, Ohio

/s/ Claude L. Dawson,
 Claude L. Dawson,
 Attorney for the Plaintiff,
 1012 - 14th St., N.W.,
 Washington 5, D. C.

STATE OF OHIO

County of Montgomery ss:

FRANK V. DILATUSH, being first duly sworn on his oath deposes and says; That he is the plaintiff in the above entitled action; That he has read the within and

foregoing complaint and knows the contents thereof; That the matters and things therein contained states of his personal knoweldge are true, and those stated upon information and belief he believes to be true.

/s/ Frank V. Dilatush

Subscribed and sworn to before me this 24th day of March, 1955. Don E. Sproul, Notary Public in and for the County of Montgomery, State of Ohio. My commission expires May 9, 1955.

* * * *

6 Filed June 23, 1955, Harry M. Hull, Clerk

Answer

First Defense

The complaint fails to state a claim upon which relief may be granted.

Second Defense

Answering the numbered paragraphs of the complaint, defendants aver:

1. Defendants are without information with which to form a belief as to the truth or falsity of the allegations contained in paragraph 1 of the complaint.

2. Defendants admit that Charles E. Wilson is Secretary of Defense of the United States, but are without information with which to form a belief as to the truth or falsity of the allegations concerning the capacity in which he is sued.

3. Defendants admit that Harold E. Talbott is Secretary of the Air Forces of the United States, but are without information with which to form a belief as to the

truth or falsity of the allegations concerning the capacity in which he is sued.

4. Defendants admit that Philip Young, George M. Moore and Frederick J. Lawton are the members of the United States Civil Service Commission and constitute the entire membership of that Commission, but are without information with which to form a belief as to the truth or falsity of the allegations concerning the capacities in which they are sued.

7 5. Admitted.

6. Admitted.

7. Denied.

8. Defendants admit that plaintiff was an honorably discharged veteran employed at Wright-Patterson Materiel Field, Dayton, Ohio, as a contract specialist, GS-7, and was separated from Government service on May 28, 1953 and deny all other allegations in paragraph 8 of the complaint.

9. Defendants admit that plaintiff was a veterans preference eligible and deny all other allegations of paragraph 9 of the complaint.

10. Denied.

11. Denied.

12. Denied.

13. Defendants are without information with which to form a belief as to the truth or falsity of the allegations contained in paragraph 13 of the complaint.

14. Denied.

WHEREFORE, having fully answered, defendants demand judgment herein in their favor, together with the costs of this action.

/s/ Leo A. Rover
Leo A. Rover
United States Attorney

/s/ Oliver Gasch
Oliver Gasch
Assistant United States
Attorney

/s/ Frank H. Strickler
Frank H. Strickler
Assistant United States
Attorney

/s/ William F. Becker
William F. Becker
Assistant United States
Attorney

8

Certificate of Service

I hereby certify that service of the foregoing Answer was made upon plaintiff by mailing a copy thereof to his attorney, Claude L. Dawson, Esquire, 1012-14th Street, N. W., Washington, D. C., this 22nd day of June, 1955.

/s/ William F. Becker
William F. Becker
Assistant United States
Attorney

• • • •

10 Filed Oct. 14, 1955, Harry M. Hull, Clerk

Motion for Summary Judgment

Come now the defendants and by their attorney, the United States Attorney, move this honorable Court for summary judgment herein on the ground that there is no genuine issue as to a material fact and they are entitled to judgment as a matter of law. The exhibits attached hereto are made a part hereof.

/s/ Leo A. Rover
Leo A. Rover
United States Attorney

/s/ Oliver Gasch
Oliver Gasch
Assistant United States
Attorney

/s/ Frank H. Strickler
Frank H. Strickler
Assistant United States
Attorney

/s/ William F. Becker
William F. Becker
Assistant United States
Attorney

Certificate of Service

I hereby certify that service of the foregoing Motion for Summary Judgment, together with memorandum of points and authorities in support thereof, was made upon plaintiff by mailing a copy thereof to his attorney, Claude L. Dawson, Esquire, 1012 - 14th Street, N. W., Washington, D. C. this 14th day of October 1955.

/s/ William F. Becker
William F. Becker
Assistant United States
Attorney

* * * *

15 Filed Oct. 14, 1955, Harry M. Hull, Clerk

On 3-13-53 you received notification of proposed removal due to misconduct and lack of responsibility as demonstrated by your attempted destruction of certain signed original documents having a direct bearing on your regularly assigned duties. Full and careful consideration have been given to your written replies of 3-19 and 4-27-53, and to your oral replies. At no time have you made a direct answer to the charges or offered any information sufficient to nullify the charges. It is therefore decided to remove you from the Federal service. Number of hours of terminal annual leave: 84

Calendar year covered: 5-29-53 through 6-12-53—4 hours

For the Commanding Officer: C. E. Gray, Chief, Civilian Personnel Branch Directorate, Base Personnel and Training.

16 Filed Oct. 14, 1955, Harry M. Hull, Clerk
ACU (MCACU)

ND Thorn

CEG (Clarence E. Gray)

H. Mettler, EWACR

M. Cottingham, EWACRS

Dortha S. Dunaway, EWACNB, 5-21-53

Isabel Klenk, EWACUB, 5-21-53

"SPECIAL HANDLING REQUIRED"

(Reference AMC R 205-25)

EWACUB/IK/emw/24225

Typed 20 May 1953

**SUBJECT: Removal—Misconduct
THRU: MCPPEE**

TO: Mr. Frank V. Dilatush

1. You are advised that the decision has been made to remove you from the Federal service due to miscon-

13 A

duct. You were notified by letter dated 13 March 1953 from the Chief of the Aeronautical Equipment Branch that removal action was contemplated because of misconduct and lack of responsibility as demonstrated by your attempt to destroy certain signed original documents having a direct bearing on your regularly assigned duties. The specific documents were identified in that letter, and were later made available for your personal inspection.

2. You were given an opportunity to reply to the charges, and your reply of March 19, 1953, as well as your supplementary letter of April 27, 1953, have been carefully considered. On 13 May 1953, an informal discussion was held in the office of your Branch Chief, attended by you, three representatives of management, and three representatives of the Civilian Personnel Office, in an attempt to clarify the issues involved and to be sure that the decision regarding your proposed removal could be made as fairly as possible.

3. The documents involved internal correspondence within Headquarters, Air Materiel Command, and correspondence with Headquarters, SAAMA, Kelly Air Force Base, Texas, pertaining to the requirement for Time Compliance Technical Orders as opposed to Service Bulletins pertaining to two contracts with the same firm. The pieces of the torn correspondence between your office and the Maintenance Division of this Headquarters were found in a wastebasket near your desk shortly after you denied any knowledge of such correspondence, although you had personally dictated and coordinated a part of it. Since both sets of correspondence pertained to situations where you had failed to take proper action for which you were responsible regarding Air Force Procurement Contracts, and since you have offered no information to nullify the charges, the decision has

17 been made to remove you from the service. At no

time have you given a direct answer to the question, "Did you attempt to destroy the documents in question?" Instead, you have attempted to answer the charges against you by making counter charges of conspiracy to "frame" you against other personnel of your immediate office.

4. It is noted that in your letters of reply to the charges, you have stressed the fact that you are an attorney. Your education and legal experience make the offense especially serious. The lack of responsibility which has been demonstrated is most unfortunate in a man of your years and background, and gives rise to justified doubt as to your suitability for government employment. You are most fortunate, indeed, that loss of life or loss or damage to government aircraft did not result from your misconduct.

5. If you so desire, you may appeal this decision under the Air Force grievance procedure established by Chapter AF E2 of Air Force Manual 40-1. Appeal under the Air Force grievance procedure must be made in writing within thirty (30) days after the effective date of your removal. The appeal should be addressed to the Commanding General, Wright-Patterson Air Force Base, Ohio, Attention: EWACUB.

6. You are also advised of your right to appeal to the Civil Service Commission under Section 14, of the Veterans' Preference Act. Any such appeal should be addressed to the Sixth United States Civil Service Region, United States Post Office and Courthouse Building, Cincinnati 2, Ohio, and must be received in that office within ten (10) days from the effective date of your separation.

7. You should understand, however, that if an appeal is accepted by the Civil Service Commission, no future appeal of your removal may be made under the Air

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Force grievance procedure and action on any appeal you may already have made will cease.

8. Standard Form 50, "Notification of Personnel Action," showing the effective date of your removal is inclosed and you should report to your Placement and Employee Relations Advisor, Miss Klenk, whose office is located at Room 018, Building 15, Area B, immediately upon receipt of this letter in order to complete your clearance.

18 9. The original letter of charges is returned to you for your disposition, and a copy of the letter recently addressed to your attorney is also inclosed.

BY COMMAND OF BRIGADIER GENERAL
BROWN,

C. E. Gray
Chief, Civilian Personnel
Branch Directorate, Base
Personnel and Training

3 Incls

1—SF-50

2—Ltr dtd 13 Mar 53

"Removal—Misconduct"

3—Cy ltr to Mr. Don Sproul

19 Filed Oct. 14, 1955, Harry M. Hull, Clerk

SUBJECT: Removal—Misconduct

THRU: MCPPEE

TO: Frank V. Dilatush

1. This is your official notification that you are being considered for removal from the Federal Service due to your misconduct and lack of responsibility in the performance of your duties as Contract Specialist, grade

GS-1102-7, salary \$4330.00 per annum, in the Power Plant Section of the Aeronautical Equipment Branch, Procurement Division.

2. You have demonstrated your misconduct and lack of responsibility by attempting to destroy, i.e., tearing into small pieces and depositing in your waste basket, certain signed original documents having a direct bearing on your regularly assigned duties. These documents were recovered, pieced together, and are available for examination by you or any other interested person or persons. The documents under discussion are listed and described here:

a. Disposition Form, 9 April 1952, Subject: "Time Compliance Technical Orders and ECP's for Aircooled Motors O-335-4-5, YO-335-5, O-425-1", from MCMMXF to MCPPAE55.

b. Disposition Form, 7 June 1952, Subject: same as in a. above, from MCPPAE55 to MCMMXF-11. It is noted that you prepared this Disposition Form in answer to the Disposition Form described in a. above, and coordinated it with your signature.

c. Disposition Form, Comment 2 to Disposition Form described in b. above, dated 13 June 1952, from MCMF to MCPPAE-55.

20

In further explanation you will no doubt recall that a representative from MCPPBO, Data Unit, Production Control Office, came to your desk on or about 26 February 1953 to see why—in view of the interchange represented by the documents listed earlier in this paragraph under a., b., and c.,—provisions for Technical Order Compliance had not been included in Supplemental Agreement No. 17 to AF (33-038)-22896, for which you were responsible, and that you disclaimed any knowledge or receipt of those documents or of Aircraft Subdivision

Policy Memo No. 6 dated 19 April 1952 or Amendment No. 1 thereto dated 8 May 1952, which set up the requirement for Technical Order Compliance in lieu of Service Bulletins. Later—and after you had received a telephone call on this same matter—you were observed extracting from your files certain documents later recovered and identified as those listed under a., b., and c. above, and tearing them up and depositing them in your waste basket.

d. Letter from Aircooled Motors, Inc., dated 2 December 1952, addressed to the attention of MCPPAE-55, Subject: "Service Bulletins for O-335 Engines." This letter has a direct bearing on the Service Bulletin situation which eventually resulted in Supplemental Agreement No. 17 to contract AF (33-038)-22896 which established contractual coverage and money for the Service Bulletins rather than for the Time Compliance Technical Orders as required under the Aircraft Subdivision Policy Memo No. 6 and Amendment No. 1 thereto mentioned earlier in this paragraph.

e. Your letter 25 November 1952 to Commanding General SAAMA, Kelly Air Force Base, Texas, Subject: "Contract AF 33(600)-18388, Item No. 7, Change Order No. 3".

f. First Indorsement from Hq. SAAMA, Kelly Air Force Base, Texas, which is an answer to letter described in e. above.

Letter—e. above—replied to copy of SAAMA letter of 29 August 1952 to Aircooled Motors through Rochester Regional Office, which asked, among other things, for deletion of Item 171, Valves, Part No. 0238-18285 as these were being procured under another item on the contract, your letter stating that the 29 August letter was wrong and that the referenced part number in that letter was

0238-18258. (Stock number was correct and part number was transposed).

First Indorsement—f. above—answers your letter—e. above—and reiterates what was stated in the 29 August letter, i.e., that the part number of 0258-18285 (reference to the file copy of the SAAMA letter of 29 August 21 1952 discloses reference to be 0258-18285 as stated by SAAMA). The attempt to destroy documents, identified as e. and f. above, was a few days prior to the attempted destruction of a., b., c., and d.

Copy of SAAMA letter 29 August 1952 was forwarded to this Headquarters from the Rochester Air Regional Office with its transmittal letter of 11 September 1952 (NEHRSSC/GFF/MIS), the third paragraph of this transmittal letter reading as follows: "It is requested that you initiate action to incorporate the changes referred to in referenced letter", (29 August letter from SAAMA).

The action referred to was in connection with Item No. 7 to Contract AF 33(600) 18388 (Items 171 and 286 of Exhibit A2, and new items 105a and 310a). Items 171 and 286, the overall cost of which on the priced exhibit was \$5,831.17, were to be cancelled, and items 105a and 310a, not then on contract, were to be procured. No contractual action was taken to either cancel the items or procure the items as requested. The possible result from non-accomplishment of that action, which was your responsibility, would have been a useless expenditure of up to \$5,831.17 on the one hand and on the other a critical shortage position on the two items not procured. Had items that you failed to procure been required for combat engines the effect might well have been very serious and far reaching.

Mr. Chadwick of Aircooled Motors received shipping instructions on the contract pursuant to OTT 12-1616 on

19 December 1952 with a note from SAAMA to the effect that Items 171 and 286 were to be deleted. That is the reason no cost was incurred as Mr. Chadwick had already—on 14 October—quoted SAAMA on the two (2) items (105a and 310a) to be procured and agreed to incur no cost on the items (171 and 286) that were to be deleted. In telephone conversation with this Headquarters 10 March 1952, Mr. Chadwick stated that he could not understand why there had been no further contractual action. This lack of proper action on your part during this six months period, and your subsequent attempt to destroy original signed correspondence relating to it are considered conclusive evidence of lack of responsibility and misconduct.

3. There is no information available on the relative cost of the Service Bulletins which were furnished pursuant to Supplemental Agreement No. 17 of Contract W33(038) 22896 and the Time Compliance Technical Orders that should have been furnished (see subparagraphs a, b, and c, of preceeding paragraph 2).

22 4. The Base Security Officer will be informed of the general content of the preceeding paragraphs for such action as may be deemed necessary in connection with your security clearance.

5. In accordance with the Veterans Preference Act of 1944 you are being given thirty (30) days advance notice of the proposed removal action. During this thirty (30) day period you will be retained in a work status, and will be assigned duties by the Unit Chief of your organizational component. You will not be permitted to exercise sole custody of correspondence files pertaining to contracts on which you would normally perform administrative functions, nor on new procurements which normally would require your services in a negotiating capacity.

6. You have the right to reply personally and in writing to this notice of proposed removal, and to show cause why the action should not be taken. You may submit affidavits and evidence in support of your answer. Your reply must be made within seven (7) days from receipt of this notice. A written reply should be brought or mailed to the undersigned so as to be received not later than March 21, 1953.

7. You may discuss your case with Miss Isabel Klenk, telephone 2-4225, Room 018, Building 15, this Headquarters, (the placement and employee relations advisor) who will advise you on preparation of your reply.

8. No decision to separate you has been made, or will be made, until after the time allowed for your reply. Your reply will be given careful consideration before final decision is made. Whether you reply or not, a written notice of final decision will be given you.

/s/ Charles F. Burley
Charles F. Burley
Lt. Colonel, USAF, Chief,
Aeronautical Equipment
Branch, Procurement
Division

Isabel Klenk, EWACUB, 3-12-53
M. R. Shaw, MCPPEE
C. A. Kochendorfer
T. B. Motz, Capt, USAF
O. M. Scott, Lt Col, USAF

* * * *

21 A

24 "SPECIAL HANDLING REQUIRED"
(Reference AMC R 205-25)

EWACUB/IK/emw/24225
Typed 20 May 1953

ACU (MCACU)
ND Thorn
CEG (Clarence D. Gray)
H. Mettler, EWACR
M. Cottingham, EWACRS
Dortha S. Dunaway, EWACNB, 5-21-53
Isabel Klenk, EWACUB, 5-21-53

SUBJECT: Removal—Misconduct
THRU: MCPPEE

TO: Mr. Frank V. Dilatush

1. You are advised that the decision has been made to remove you from the Federal service due to misconduct. You were notified by letter dated 13 March 1953 from the Chief of the Aeronautical Equipment Branch that removal action was contemplated because of misconduct and lack of responsibility as demonstrated by your attempt to destroy certain signed original documents having a direct bearing on your regularly assigned duties. The specific documents were identified in that letter, and were later made available for your personal inspection.

2. You were given an opportunity to reply to the charges, and your reply of March 19, 1953, as well as your supplementary letter of April 27, 1953, have been carefully considered. On 13 May 1953, an informal discussion was held in the office of your Branch Chief, attended by you, three representatives of management, and three representatives of the Civilian Personnel Office, in an attempt to clarify the issues involved and to be sure that the decision regarding your proposed removal could be made as fairly as possible.

3. The documents involved internal correspondence within Headquarters, Air Materiel Command, and correspondence with Headquarters, SAAMA, Kelly Air Force Base, Texas, pertaining to the requirement for Time Compliance Technical Orders as opposed to Service Bulletins pertaining to two contracts with the same firm. The pieces of the torn correspondence between your office and the Maintenance Division of this Headquarters were found in a wastebasket near your desk shortly after you denied any knowledge of such correspondence, although you had personally dictated and coordinated a part of it. Since both sets of correspondence pertained to situations where you had failed to take proper action for which you were responsible regarding Air Force Procurement Contracts, and since you have offered no information to nullify the charges, the decision
25 has been made to remove you from the service.

At no time have you given a direct answer to the question, "Did you attempt to destroy the documents in question?" Instead, you have attempted to answer the charges against you by making counter charges of conspiracy to "frame" you against other personnel of your immediate office.

4. It is noted that in your letters of reply to the charges, you have stressed the fact that you are an attorney. Your education and legal experience make the offense especially serious. The lack of responsibility which has been demonstrated is most unfortunate in a man of your years and background, and gives rise to justified doubt as to your suitability for government employment. You are most fortunate, indeed, that loss of life or loss or damage to government aircraft did not result from your misconduct.

23 A

5. If you so desire, you may appeal this decision under the Air Force grievance procedure established by Chapter AF E2 of Air Force Manual 40-1. Appeal under the Air Force grievance procedure must be made in writing within thirty (30) days after the effective date of your removal. The appeal should be addressed to the Commanding General, Wright-Patterson Air Force Base, Ohio, Attention, EWACUB.

6. You are also advised of your right to appeal to the Civil Service Commission under Section 14, of the Veterans' Preference Act. Any such appeal should be addressed to the Sixth United States Civil Service Region, United States Post Office and Courthouse Building, Cincinnati 2, Ohio, and must be received in that office within ten (10) days from the effective date of your separation.

7. You should understand, however, that if an appeal is accepted by the Civil Service Commission, no future appeal of your removal may be made under the Air Force grievance procedure and action on any appeal you may already have made will cease.

8. Standard Form 50, "Notification of Personnel Action," showing the effective date of your removal is inclosed and you should report to your Placement and Employee Relations Advisor, Miss Klenk, whose office is located at Room 018, Building 15, Area B, immediately upon receipt of this letter in order to complete your clearance.

26 9. The original letter of charges is returned to you for your disposition, and a copy of the letter recently addressed to your attorney is also inclosed.

BY COMMAND OF BRIGADIER GENERAL
BROWN,

C. E. GRAY,
Chief, Civilian Personnel
Branch Directorate, Base
Personnel and Training

3 Incls

1—SF-50

2—Ltr dtd 13 Mar 53

“Removal—Misconduct”

3—Cy ltr to Mr. Don Sproul

* * * *

31 Filed Oct. 17, 1955, Harry M. Hull, Clerk

Plaintiff's Motion for a Summary Judgment

Comes now the plaintiff in the above entitled case and moves the Court for a summary judgment in his favor upon the grounds that there is no genuine issue of fact in this cause, and that the plaintiff is entitled to judgment upon the basis of the undisputed facts, and the law applicable thereto. This motion is based upon the verified complaint in this cause, and the affidavit of the plaintiff hereto attached.

/s/ Claude L. Dawson
Claude L. Dawson
Attorney for the Plaintiff
1012 - 14th St., N.W.,
Washington 5, D. C.

To the Honorable Leo A. Rover,
United States Attorney for the
District of Columbia,
Attorney for the said defendants:

Please take notice that the points and authorities in support of the above motion for a summary judgment are attached hereto. The rules require that if you oppose the foregoing motion you shall within ten (10) days from the service of this motion file with the clerk of this Court your points and authorities and opposing affidavits, and serve a copy thereof on the undersigned as counsel for the plaintiff.

/s/ Claude L. Dawson
Claude L. Dawson
Attorney for the Plaintiff
1012 - 14th St., N.W.,
Washington 5, D. C.

* * * *

32 Filed Oct. 17, 1955, Harry M. Hull, Clerk

*Affidavit of the Plaintiff in Support of Motion for a
Summary Judgment*

STATE OF OHIO

County of Montgomery ss:

FRANK V. DILATUSH, being first duly sworn according to law upon his oath deposes and says, that he is the plaintiff in the above entitled cause, and that he makes this affidavit in support of the motion for a summary judgment in this cause. That the motion of the affiant for a summary judgment is also predicated upon the verified complaint filed in this cause. Affiant further says that he was discharged from his governmental position upon the basis of charges filed against him, a true copy of said charges being attached hereto and marked

exhibit "A" and hereby incorporated herein, and that there is attached hereto marked exhibit "B" a true copy of the findings on the said alleged charges.

Affiant further says that the charges against him do not give the time, place, the day of the month or year such matters were alleged to have been done by the affiant, and affiant denies each and every charge contained in the said alleged charges brought forth in said exhibit "A". That since the said charges are not specific nor in detail as required by section 14 of the Veterans Preference Act, the affiant could only deny them in toto.

/s/ Frank V. Dilatush
Frank V. Dilatush

Subscribed and sworn to before me this 12th day of October, 1955.

/s/ Don E. Sproul

Notary Public in and for the County of Montgomery,
STATE OF OHIO.

My commission expires: May 9, 1958.

* * * *

33 Filed Oct 17 1955 Harry M. Hull, Clerk

EXHIBIT "A"
HEADQUARTERS
AIR MATERIAL COMMAND
Wright-Patterson Air Force Base, Ohio

March 13, 1953

SUBJECT: Removal—Misconduct
THRU: MCPPEE
TO: Frank V. Dilatush

1. This is your official notification that you are being considered for removal from the Federal Service due to

your misconduct and lack of responsibility in the performance of your duties as Contract Specialist, grade GS-1102-7, salary \$4330.00 per annum, in the Power Plant Section of the Aeronautical Equipment Branch, Procurement Division.

2. You have demonstrated your misconduct and lack of responsibility by attempting to destroy, i.e., tearing into small pieces and depositing in your waste basket, certain signed original documents having a direct bearing on your regularly assigned duties. These documents were recovered, pieced together, and are available for examination by you or any other interested person or persons. The documents under discussion are listed and described here:

a. Disposition Form, 9 April 1952, Subject: "Time Compliance Technical Orders and ECP's for Aircooled Motors O-335-4-5, YO-335-5, O-425-1", from MCMMXF to MCPPAE55.

b. Disposition Form, 7 June 1952, Subject: same as in a. above, from MCPPAE55 to MCMMXF-11. It is noted that you prepared this Disposition Form in answer to the Disposition Form described in a. above, and coordinated it with your signature.

c. Disposition Form, Comment 2 to Disposition Form described in b. above, dated 13 June 1952, from MCMF to MCPPAE-55. In further explanation you will no doubt recall that a representative from MCPPBO, Data Unit, Production Control Office, came to your desk on or about 25 February 1953 to see why—in view of the interchange represented by the documents listed earlier in this paragraph under a., b., and c.,—Provisions for Technical Order Compliance had not been included in Supplemental Agreement No. 17 to AF (33-038)-22896, for which you were responsible, and that you disclaimed any knowledge or receipt of those documents or of Aircraft Subdivision Policy Memo No. 6 dated 19 April 1952 or Amendment No.1 there-

34 to dated 8 May 1952, which set up the requirement for Technical Order Compliance in lieu of Service Bulletins. Later — and after you had received a telephone call on this same matter — you were observed extracting from your files certain documents later recovered and identified as those listed under a., b., and c. above, and tearing them up and depositing them in your waste basket.

d. Letter from Aircooled Motors, Inc., dated 2 December 1952, addressed to the attention of MCPPAE-55, Subject: "Service Bulletins for O-335 Engines." This letter has a direct bearing on the Service Bulletin situation which eventually resulted in Supplemental Agreement No. 17 to contract AF(33-038)-22896 which established contractual coverage and money for the Service Bulletins rather than for the Time Compliance Technical Orders as required under the Aircraft Subdivision Policy Memo No. 6 and Amendment No. 1 thereto mentioned earlier in this paragraph.

e. Your letter 25 November 1952 to Commanding General, SAAMA, Kelly Air Force Base, Texas, Subject: "Contract AF 33(600)-18388, Item No. 7, Change Order No. 3".

f. First Indorsement from Hq. SAAMA, Kelly Air Force Base, Texas, which is an answer to letter described in e. above.

Letter—e. above—replied to copy of SAAMA, letter of 29 August 1952 to Aircooled Motors through Rochester Regional Office, which asked, among other things, for deletion of Item 171, Valves, Part No. 0238-18285 as these were being procured under another item on the contract, your letter stating that the 29 August letter was wrong and that the referenced part number in that letter was 0238-18258. (Stock number was correct and part number was transposed).

First Indorsement—f. above—answers your letter—e. above—and reiterates what was stated in the 29 August letter, i.e., that the part number of 0258-18285 (reference to the file copy of the SAAMA letter of 29 August 1952 discloses reference to be 0258-18285 as stated by SAAMA). The attempt to destroy documents, identified as e. and f. above, was a few days prior to the attempted destruction of a., b., c., and d.

Copy of SAAMA letter 29 August 1952 was forwarded to this Headquarters from the Rochester Air Regional Office with its transmittal letter of 11 September 1952 (NEHRSSC/GEF/MIS), the third paragraph of this transmittal letter reading as follows: "It is requested that you initiate action to incorporate the changes reffered to in referenced letter", (29 August letter from SAAMA).

The action reffered to was in connection with Item No. 7 to Contract AF 33(600) 18388 (Items 171 and 286 of Exhibit A2, and new items 105a and 310a). Items 171 and 286, the over all cost of which on the priced exhibit was \$5,831.17, were to be cancelled, and items 105a and 310a, not then on contract, were to be procured. No Contractual action was taken to either cancel the items or procure the items as requested. The possible result from non-accomplishment of that action, which was your responsibility, would have been a useless expenditure of up to \$5,831.17 on the one hand and on the other a critical shortage position on the two items not procured. Had Items that you failed to procure been required for combat engines the effect might well have been very serious and far reaching.

Mr. Chadwick of Aircooled Motors received shipping instructions on the contract pursuant to OTT 12-1616 on 19 December 1952 with a note from SAAMA to the effect Items 171 and 286 were to be deleted. That is the reason no cost was incurred as Mr. Chadwick had already—on 14 October—quoted SAAMA on the two (2) items (105a and

310a) to be procured and agreed to incur no cost on the items (171 and 286) that were to be deleted. In telephone conversation with this Headquarters 10 March 1952, Mr. Chadwick stated that he could not understand why there had been no further contractual action. This lack of proper action on your part during this six months period, and your subsequent attempt to destroy original signed correspondence relating to it are considered conclusive evidence of lack of responsibility and misconduct.

3. There is no information available on the relative cost of the Service Bulletins which were furnished pursuant to Supplemental Agreement No. 17 of Contract W33-(038) 22896 and the Time Compliance Technical Orders that should have been furnished (see subparagraphs a, b, and c, of preceding paragraph 2).

4. The Base Security Officer will be informed of the general content of the preceding paragraphs for such action as may be deemed necessary in connection with your security clearance.

5. In accordance with the Veterans Preference Act of 1944 you are being given thirty (30) days advance notice of the proposed removal action. During this thirty (30) day period you will be retained in a work status, and will be assigned duties by the Unit Chief of your organizational component. You will not be permitted to exercise sole custody of correspondence files pertaining to contracts on which you would normally perform administrative functions, nor on new procurements which normally would require your services in a negotiating capacity.

6. You have the right to reply personally and in writing to this notice of proposed removal, and to show cause why the action should not be taken. You may submit affidavits and evidence in support of your answer. Your reply must be made within seven (7) days from receipt of this notice. A written reply should be brought or mailed to the

31 A

undersigned so as to be received not later than March 21, 1953.

7. You may discuss your case with Miss Isabel Klenk, telephone 2-4225, room 018, Building 15, this Headquarters, (the placement and employee relations adviser) who will advise you on preparation of your reply.

36 8. No decision to separate you has been made, or will be made until after the time allowed for your reply. Your reply will be given careful consideration before final decision is made. Whether you reply or not, a written notice of final decision will be given you.

/s/ Charles F. Burley
CHARLES F. BURLEY
Lt. Colonel, USAF
Chief, Aeronautical
Equipment Branch
Procurement Division

37 Filed Oct 17 1955 Harry M. Hull, Clerk

EXHIBIT "B"

HEADQUARTERS
WRIGHT-PATTERSON AIR FORCE BASE
OHIO

28 May 1953

EWACUB

SUBJECT: Removal—Misconduct

THRU: MCPPEE

TO: Mr. Frank V. Dilatush

1. You are advised that the decision has been made to remove you from the Federal service due to misconduct. You were notified by letter dated 13 March 1953 from the Chief of the Aeronautical Equipment Branch that removal

action was contemplated because of misconduct and lack of responsibility as demonstrated by your attempt to destroy certain signed original documents having a direct bearing on your regular assigned duties. The specific documents were identified in that letter, and were later made available for your personal inspection.

2. You were given an opportunity to reply to the charges, and your reply of March 19, 1953, as well as your supplementary letter of April 27, 1953, have been carefully considered. On 13 May 1953, an informal discussion was held in the office of your Branch Chief, attended by you, three representatives of management, and three representatives of the Civilian Personnel Office, in an attempt to clarify the issues involved and to be sure that the decision regarding your proposed removal could be made as fairly as possible.

3. The documents involved internal correspondence within Headquarters, Air Material Command and correspondence with Headquarters, SAAMA, Kelly Air Force Base, Texas, pertaining to the requirement for Time Compliance Technical Orders as opposed to Service Bulletins pertaining to two contracts with the same firm. The pieces of the torn correspondence between your office and the Maintenance Division of this Headquarters were found in a waste basket near your desk shortly after you denied any knowledge of such correspondence, although you had personally dictated and coordinated a part of it. Since both sets of correspondence pertained to situations where you had failed to take proper action for which you were responsible regarding Air Force Procurement Contracts, and since you have offered no information to nullify the charges, the decision has been made to remove you from the service. At no time have you given a direct answer to the question, "Did you attempt to destroy the documents in question?" Instead, you have attempted to answer the charges against you by making counter charges of conspiracy to

"frame" you against other personnel of your immediate office.

38 4. It is noted that in your letters of reply to the charges, you have stressed the fact that you are an attorney. Your education and legal experience make the offense especially serious. The lack of responsibility which has been demonstrated is most unfortunate in a man of your years and background, and gives rise to justified doubt as to your suitability for government employment. You are most fortunate, indeed, that loss of life or loss or damage to government aircraft did not result from your misconduct.

5. If you so desire, you may appeal this decision under the Air Force grievance procedure established by Chapter AF E2 of Air Force Manual 40-1. Appeal under the Air Force grievance procedure must be made in writing within thirty (30) days after the effective date of your removal. The appeal should be addressed to the Commanding General, Wright-Patterson Air Force Base, Ohio, Attention: EWACUB.

6. You are also advised of your right to appeal to the Civil Service Commission under Section 14, of the Veterans' Preference Act. Any such appeal should be addressed to the Sixth United States Civil Service Region, United States Post Office and Courthouse Building, Cincinnati 2, Ohio, and must be received in that office within ten (10) days from the effective date of your separation.

7. You should understand, however, that if an appeal is accepted by the Civil Service Commission, no future appeal of your removal may be made under the Air Force grievance procedure and action on any appeal you may already have made will cease.

8. Standard form 50, "Notification of Personnel Action," showing the effective date of your removal is enclosed and you should report to your Placement and Em-

ployee Relations Adviser, Miss Klenk, whose office is located at Room 018, Building 15, Area B, immediately upon receipt of this letter in order to complete your clearance.

9. The original letter of charges is returned to you for your disposition, and a copy of the letter recently addressed to your attorney is also enclosed.

BY COMMAND OF BRIGADIER GENERAL BROWN:

/s/ C. E. Gray
C. E. GRAY
Chief, Civilian Personnel
Branch
Directorate, Base Personnel
and Training

* * * *

44 Filed Dec 6 1955 Harry M. Hull, Clerk

Order

This cause having come on for hearing on defendants' motion for summary judgment and on plaintiff's counter-motion for summary judgment, after argument of counsel, the Court finds that the charges upon which plaintiff was removed from his official position with the United States government were specific and in sufficient detail as required by Section 14 of the Veterans Preference Act of June 27, 1955. Therefore, it is by the Court this 5th day of December, 1955

ORDERED that the motion of defendants for summary judgment be and the same is hereby granted; and that the motion of plaintiff for summary judgment be and the same is hereby denied.

/s/ Edward A. Tamm
Judge

* * * *

45 Filed Jan 23 1956 Harry M. Hull, Clerk

Notice of Appeal

Notice is hereby given this 23rd day of January, 1956, that Frank V. Dilatush hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 5th day of December, 1955 in favor of the defendants against said plaintiff.

/s/ Claude L. Dawson
Claude L. Dawson
Attorney for the plaintiff.
1012 - 14th Street, N. W.
Washington 5, D. C.

NOTE TO THE CLERK:

Copy of the within and foregoing Notice of Appeal should be forwarded to the Attorney General of the United States, Department of Justice, Washington, D. C., and also to the Honorable Leo A. Rover, United States Attorney for the District of Columbia, Courthouse, Washington, D. C., as attorneys for the said defendants.

/s/ Claude L. Dawson
Claude L. Dawson
Attorney for the plaintiff

• • • •

BRIEF FOR APPELLEES

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,262

FRANK V. DILATUSH, APPELLANT

v.

CHARLES E. WILSON, ET AL., APPELLEES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GEORGE COCHRAN DOUB,
Assistant Attorney General.

OLIVER GASCH,
United States Attorney.

MELVIN RICHTER,
ROBERT S. GREEN,
*Attorneys, Department of Justice,
Washington 25, D. C.*

United States Court of Appeals
For the
District of Columbia Circuit

FILED JUN 26 1956

Joseph W. Stewart
CLERK

QUESTION PRESENTED

The question presented is correctly stated by appellant.

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CITATIONS

Cases:

<i>Baughman v. Green</i> , — U.S. App. D.C. —, 229 F.2d 33.	10, 11, 13, 17
<i>Blackmar v. United States</i> , 128 C.Cls. 693, 120 F. Supp. 408.	11, 17
<i>Blackmon v. Lee</i> , 92 U.S. App. D.C. 268, 205 F.2d 13. 9, 10, 15, 16, 17	11, 12, 13
<i>Deak v. Pace</i> , 88 U.S. App. D.C. 50, 185 F.2d 997.	11, 12, 13
<i>Deviny v. Campbell</i> , 90 U.S. App. D.C. 171, 194 F.2d 876, cer- tiorari denied, 334 U.S. 826	11
<i>Englehardt v. United States</i> , 125 C. Cls. 603.	11
<i>Money v. Anderson</i> , 93 U.S. App. D.C. 130, 208 F.2d 34.	12, 13
<i>Mulligan v. Dunlop</i> , 108 F. Supp. 296 (D. D.C.), reversed on other grounds <i>sub nom Mulligan v. Andrews</i> , 93 U.S. App. D.C. 375, 211 F.2d 28	11, 13, 17, 18
<i>Williams v. Cravens</i> , 93 U.S. D.C. 380, 210 F.2d 874, certi- orari denied, 348 U.S. 819	11, 12

Statutes:

Veterans' Preference Act of 1944, as amended (5 U.S.C. 863):	
Section 14	1, 6, 7, 9, 10, 10, 11, 14, 16
5 U.S.C. 652(a)	17

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13,262

FRANK V. DILATUSH, APPELLANT

v.

CHARLES E. WILSON, ET AL., APPELLEES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES

COUNTERSTATEMENT OF THE CASE

This is a dismissal case in which appellant, an honorably discharged veteran, claims that the actions of Government officials have violated Section 14 of the Veterans' Preference Act in that (1) the charges leading to his dismissal were not sufficiently specific as required by Section 14 and (2) the Letter of Dismissal contains no finding of guilt and no express determination that the dismissal was for such cause as would promote the efficiency of the service. Upon cross motions for summary judgment, the District Court granted appellees' motion and denied that of appellant. The facts, as disclosed by the affidavits and documents attached to the respective motions, are as follows:

The Statement of Charges. Appellant was employed by the United States at Wright-Patterson Material Field,

Dayton, Ohio, as a Contract Specialist, GS-7 (J. A. 4A). On March 13, 1953, he was served with a Statement of Charges advising him that he was being considered for removal from the Federal Service for "misconduct and lack of responsibility" (J. A. 15A). Headed "Removal—Misconduct," the Statement of Charges in paragraph 1 advised appellant "This is your official notification that you are being considered for removal from the Federal Service due to your misconduct and lack of responsibility in the performance of your duties as Contract Specialist * * *." (J. A. 15A.) Paragraph 2 stated (J. A. 16A):

You have demonstrated your misconduct and lack of responsibility by attempting to destroy, i. e., tearing into small pieces and depositing in your waste basket, certain signed original documents having a direct bearing on your regularly assigned duties. These documents were recovered, pieced together, and are available for examination by you or any other interested person or persons. * * *

Under subparagraphs a, b, and c, the Statement listed and specifically described by date and subject matter three "Disposition Forms" so destroyed (J. A. 16A):

a. Disposition Form, 9 April 1952, Subject: "Time Compliance Technical Orders and ECP's for Aircooled Motors O-335-4-5, YO-335-5, O-425-1", from MCMMXF to MCPPAE55.

b. Disposition Form, 7 June 1952, Subject: same as in a. above, from MCPPAE55 to MCMMXF-11. It is noted that you prepared this Disposition Form in answer to the Disposition Form described in a. above, and coordinated it with your signature.

c. Disposition Form, Comment 2 to Disposition Form described in b. above, dated 13 June 1952, from MCMF to MCPPAE-55.

"In further explanation," the statement advised appellant (J. A. 16A-17A) that a representative from the Production Control Office

* * * came to your desk on or about 26 February 1953 to see why—in view of the interchange represented by the documents listed earlier in this paragraph under a., b., and c.,—provisions for Technical Order Compliance had not been included in Supplemental Agreement No. 17 to AF (33-038)-22896, for which you were responsible, and that you disclaimed any knowledge or receipt of those documents or of Aircraft Subdivision Policy Memo No. 6 dated 19 April 1952 or Amendment No. 1 thereto dated 8 May 1952, which set up the requirement for Technical Order Compliance in lieu of Service Bulletins. Later—and after you had received a telephone call on this same matter—you were observed extracting from your files certain documents later recovered and identified as those listed under a., b., and c. above, and tearing them up and depositing them in your waste basket.

The Statement of Charges then listed, under subparagraphs d, e, and f, three additional documents which appellant had similarly destroyed, likewise describing these documents in great detail¹ and stating that (J. A. 18A):

¹ The letter described these documents as follows (J.A. 17A-18A):

d. Letter from Aircooled Motors, Inc., dated 2 December 1952, addressed to the attention of MCPPAE-55, Subject: "Service Bulletins for O-335 Engines." This letter has a direct bearing on the Service Bulletin situation which eventually resulted in Supplemental Agreement No. 17 to contract AF (33-038)-22896 which established contractual coverage and money for the Service Bulletins rather than for the Time Compliance Technical Orders as required under the Aircraft Subdivision Policy Memo No. 6 and Amendment No. 1 thereto mentioned earlier in this paragraph.

e. Your letter 25 November 1952 to Commanding General SAAMA, Kelly Air Force Base, Texas, Subject: "Contract AF 33 (600)-18388, Item No. 7, Change Order No. 3".

f. First Indorsement from Hq. SAAMA, Kelly Air Force Base, Texas, which is an answer to letter described in e. above. Letter—e. above—replied to copy of SAAMA letter of 29 August 1952 to Aircooled Motors through Rochester Regional Office, which asked, among other things, for deletion of Item

* * * The attempt to destroy documents, identified as e. and f. above, was a few days prior to the attempted destruction of a., b., c., and d.

The Statement pointed out that these documents involved certain proposed changes in a contract for procurement of airplane parts and that appellant had been requested to initiate action to incorporate such changes. It noted that no such action was taken by appellant and advised him of the serious consequences that might have resulted from such inaction on his part.² Paragraph 2 of the Statement of Charges concluded (J. A. 19A):

** * * This lack of proper action on your part during this six months period, and your subsequent attempt to destroy original signed correspondence relating to it are considered conclusive evidence of lack of responsibility and misconduct. [Emphasis added.]*

In the succeeding paragraphs, the Statement informed appellant of his rights under the Veterans' Preference Act (J.A. 19A), and concluded by advising him that no decision

171, Valves, Part No. 0238-18285 as these were being procured under another item on the contract, your letter stating that the 29 August letter was wrong and that the referenced part number in that letter was 0238-18258. (Stock number was correct and part number was transposed).

First Indorsement—f. above—answers your letter—e. above—and reiterates what was stated in the 29 August letter, i.e., that the part number of 0258-18285 (reference to the file copy of the SAAMA letter of 29 August 1952 discloses reference to be 0258-18285 as stated by SAAMA). * * *

² In this connection the charges stated (J.A. 18A):

* * * The possible result from non-accomplishment of that action, which was your responsibility, would have been a useless expenditure of up to \$5,831.17 on the one hand and on the other a critical shortage position on the two items not procured. Had items that you failed to procure been required for combat engines the effect might well have been very serious and far reaching.

The next paragraph of the statement (J.A. 19A-20A) explained how such damage was fortuitously avoided.

to separate him would be made until after the time allowed for his reply, and that this reply would be given careful consideration before final decision was made (J.A. 20A).

The Letter of Dismissal. Following the receipt of appellant's answers and a conference with his superiors at which the charges were discussed (J.A. 13A), appellant was advised on May 28, 1953, by the Chief of the Civilian Personnel Branch of the decision to remove him (J.A. 12A). The Letter of Dismissal stated "that the decision has been made to remove you from the Federal service due to misconduct" (J.R. 12A-13A). The Letter referred to the Statement of Charges of March 13, 1953 which it noted had advised appellant (J.A. 13A):

* * * that removal action was contemplated because of misconduct and lack of responsibility as demonstrated by your attempt to destroy certain signed original documents having a direct bearing on your regularly assigned duties. * * *

and again pointed out that the specific documents were identified in that Statement and were made available for his personal inspection. The Letter further stated that his answers had been "carefully considered" and that the conference had been held "in an attempt to clarify the issues involved and to be sure that the decision regarding your proposed removal could be made as fairly as possible" (J.A. 13A).

The Letter of Dismissal summarized the correspondence involved and pointed out that the pieces of torn correspondence were found in a waste basket near appellant's desk after he had denied any knowledge of such correspondence although he had personally dictated and coordinated a part of it. The Letter continued (J.A. 13A-14A):

* * * Since both sets of correspondence pertained to situations where you had failed to take proper action for which you were responsible regarding Air Force Procurement Contracts, and since you have offered no information to nullify the charges, the decision has been made to remove you from the service.

At no time have you given a direct answer to the question, "Did you attempt to destroy the documents in question?" Instead, you have attempted to answer the charges against you by making counter charges of conspiracy to "frame" you against other personnel of your immediate office. [Emphasis added.]

Emphasizing the seriousness of his offense, the Letter pointed out (J.A. 14A):

* * * The lack of responsibility which has been demonstrated is most unfortunate in a man of your years and background, and gives rise to justified doubt as to your suitability for government employment. You are most fortunate, indeed, that loss of life or loss or damage to government aircraft did not result from your misconduct.

Appended to the Letter of Dismissal was an official notification of personnel action (J.A. 12A), formally notifying appellant of his removal, and summarizing the action as follows (J.A. 12A):

On 3-13-53 you received notification of proposed removal due to misconduct and lack of responsibility as demonstrated by your attempted destruction of certain signed original documents having a direct bearing on your regularly assigned duties. Full and careful consideration have been given to your written replies of 3-19 and 4-27-53, and to your oral replies. At no time have you made a direct answer to the charges or offered any information sufficient to nullify the charges. It is therefore decided to remove you from the Federal service. * * *

The Letter of Dismissal advised appellant of his right to appeal either to the Department of the Air Force under its grievance procedure or to the Civil Service Commission under Section 14 of the Veterans' Preference Act (J.A. 14A-15A).

Proceedings Below. Following the exhaustion of his administrative remedies before the Civil Service Commission without success (J.A. 6A), appellant instituted this action on April 4, 1954, in the court below, seeking a declaratory judgment that his dismissal was unlawful and an injunction ordering his reinstatement (J.A. 2A-7A). The complaint alleged that the proceedings leading to appellant's dismissal had been defective in two respects: (1) that the Statement of Charges was not sufficiently specific to meet the requirements of Section 14 of the Veterans' Preference Act (J.A. 5A) and (2) that the Letter of Dismissal did not comply with procedural requirements in that it contained no finding of guilt nor any finding that appellant's dismissal was for such cause as would promote the efficiency of the service (J.A. 5A-6A).

Appellees filed a motion for summary judgment on October 14, 1955 (J.A. 11A), attaching thereto some of the documents involved in the administrative proceedings leading to appellant's dismissal, and urging that these exhibits established that both the Statement of Charges and Letter of Dismissal met the requirements of Section 14 of the Veterans' Preference Act. Appellant also moved for summary judgment (J.A. 24A), contending in his affidavit attached thereto that the charges were not sufficiently specific to meet statutory requirements. By order dated December 5, 1955, the district court granted appellees' motion for summary judgment and denied that of appellant, stating that (J.A. 34A): " * * * the charges upon which [appellant] was removed from his official position with the United States government were specific and in sufficient detail as required by Section 14 of the Veterans Preference Act * * *." This appeal followed.

STATUTE INVOLVED

Section 14 of the Veterans' Preference Act of 1944, as amended, 5 U.S.C. 863, provides in pertinent part as follows:

§ 863. No permanent or indefinite preference eligible * * * shall be discharged, suspended for more than thirty days, furloughed without pay, reduced in rank or compensation, or debarred for future appointment except for such cause as will promote the efficiency of the service and for reasons given in writing, and the person whose discharge, suspension for more than thirty days, furlough without pay, or reduction in rank or compensation is sought shall have at least thirty days' advance written notice (except where there is reasonable cause to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed), stating any and all reasons, specifically and in detail, for any such proposed action; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answer, and shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be made in writing within a reasonable length of time after the date of receipt of notice of such adverse decision: * * *

SUMMARY OF ARGUMENT

Appellant's dismissal was accomplished with full observance of all procedural safeguards to which he was entitled. The Statement of Charges, advising him of his proposed removal for "misconduct and lack of responsibility," spelled out in meticulous detail the grounds upon which this action was to be based, describing by date, number and content certain official documents which appellant had undertaken to destroy, relating these documents to appellant's work and specifically to matters upon which he had failed to take proper action, and informing him that these documents had been recovered and were available for his inspection. Although presented with opportunities to answer these charges, either in writing or at a hearing, appellant relied instead upon a wholly unrelated and unproven countercharge of a conspiracy upon the part of his fellow

workers. Since appellant at no time gave a direct answer to the charges, he was dismissed. The Letter of Dismissal advised appellant that he was being removed for "misconduct" and for demonstrated "lack of responsibility," referred to and summarized the contents of the Statement of Charges, noted that at no time had he met the charges against him, and concluded that "The lack of responsibility which has been demonstrated * * * gives rise to justified doubt as to your suitability for government employment."

Thus there was never at any time any question as to what appellant was charged with—"misconduct and lack of responsibility," as "demonstrated" by his failure to take proper action in certain highly important matters and his subsequent attempts to destroy official documents relating to that failure, documents which were specially identified and made available for his inspection; nor is there any doubt whatever that his dismissal for "misconduct" and "lack of responsibility" as "demonstrated" by precisely the same failure to act and subsequent destruction of the specified documents, rested squarely upon these charges. Plainly both the Statement of Charges and the Letter of Dismissal "complied in all substance with Section 14" of the Veterans' Preference Act, *Blackmon v. Lee*, 92 U.S. App. D.C. 268, 270, 205 F. 2d 13, 14, in adequately advising appellant of the charges against him and of the fact that these charges had been sustained; accordingly, we submit that there is no warrant here for judicial intervention.

ARGUMENT

Appellant, recognizing the limited scope of judicial review of the personnel actions of administrative agencies (Br. p. 6), raises in this suit only two issues, both concerned with alleged procedural irregularities in the proceedings leading to his dismissal. First, he contends that the Statement of Charges was not sufficiently specific to meet the requirements of Section 14 of the Veterans' Preference Act, set forth *supra*, at p. 8. Second, he urges that the Letter of Dismissal contained no findings that appellant was guilty of the charges against him or that his dismissal was

“for such cause as will promote the efficiency of the service” within the meaning of Section 14. We believe that the district court was clearly correct in refusing to overturn the thrice reviewed administrative action and in holding that appellant’s contentions are without merit.

I

The Statement of Charges Against Appellant Was Sufficiently Specific to Meet Statutory Requirements.

This Court has consistently recognized that charges under Section 14 of the Veterans’ Preference Act are sufficiently specific if they afford an employee “a fair chance to defend himself. It is this consideration which must be controlling and not necessarily the standards of a criminal indictment.” *Baughman v. Green*, —U.S. App. D.C.—, 229 F. 2d 33, 34. We believe that the Statement of Charges served upon appellant fully met this requirement, and that, in advising him specifically and in detail of the precise charges upon which his removal was contemplated, the Statement “complied in all substance with Section 14.” *Blackmon v. Lee*, 92 U.S. App. D.C. 268, 270, 205 F. 2d 13, 14.

As we have shown, *supra*, pp. 2-5, appellant was charged with “misconduct and lack of responsibility” in carrying out his duties as a Contract Specialist (J.A. 15A). The Statement of Charges supported this allegation by stating (J.A. 16A), that appellant had “demonstrated” this misconduct and lack of responsibility by attempting to destroy certain documents; it identified in meticulous detail the dates and subject matters of these documents and their relation to appellant’s work (J.A. 16A-19A), advised that the documents had been “recovered, pieced together, and [made] available for examination by you or any other interested person or persons” (J.A. 16A), and concluded (J.A. 19A) that his inaction in the matters concerned in these documents and his subsequent attempts to destroy the documents constituted the evidence of his lack of responsibility and misconduct.

This charge of “misconduct and lack of responsibility,”

amplified by so detailed a statement, fully supplied the degree of specificity required by the courts in their numerous decisions under Section 14 of the Veterans' Preference Act and similar statutes. These cases consistently hold that no particular form is required in a Statement of Charges so long as "in the circumstances" of the particular case, it informs the employee "with reasonable certainty and precision of the cause for his removal." *Deak v. Pace*, 88 U.S. App. D.C. 50, 52, 185 F. 2d 997, 999. Where this condition is met, this and other courts have had no hesitation in upholding statements of charges despite attacks on their specificity; see e.g., *Baughman v. Green*, —U.S. App. D.C. —, 229 F. 2d 33; *Williams v. Cravens*, 93 U.S. App. D.C. 380, 210 F. 2d 874, certiorari denied, 348 U.S. 819; *Deviny v. Campbell*, 90 U.S. App. D.C. 171, 194 F. 2d 876, certiorari denied, 334 U.S. 826; *Mulligan v. Dunlop*, 108 F. Supp. 296 (D.D.C.), reversed on other grounds *sub nom Mulligan v. Andrews*, 93 U.S. App. D.C. 375, 211 F. 2d 28; and *Englehardt v. United States*, 125 C. Cls. 603. In each instance the courts have demanded only reasonable notice to the employee of the proposed reason for his dismissal, and have rejected any attempt to require of the charges "the specificity of a criminal indictment." *Baughman v. Green*, *supra*, 229 F. 2d at 34; cf. *Blackmar v. United States*, 128 C. Cls. 693, 703, 120 F. Supp. 408, 413.

Thus *Williams v. Cravens*, *supra*, involved a letter charging simply that the employee, an RFC loan examiner, had "interfered or attempted to interfere with officials of the Corporation by endeavoring to influence their judgment or recommendation with respect to loan applications under consideration." As a second charge, the employee was advised that "In passing on particular loans, you have failed to consider all important and relevant data. This has led to actions on the part of the Corporation which have been severely criticized and has made it impossible to rely upon your judgment, findings and recommendations." 93 U.S. App. D.C. at 380-381, 210 F. 2d at 875. This Court held that these charges, amplified only by the identification by name of particular loans involved, were sufficiently specific

to inform the employee with reasonable certainty of the causes for his proposed removal. In fact the Court noted that, with respect to the second charge, the "exacting and important requirements" of the employee's position as loan examiner justified his dismissal on the broad grounds of this charge alone. 93 U.S. App. D.C. at 381, 210 F. 2d at 876. Similarly, in the instant case, there seems no doubt but that the "exacting and important requirements" of appellant's position—the serious consequences that might have resulted from his misconduct are stressed in both the Statement of Charges (J.A. 18A) and the Letter of Dismissal (J.A. 14A)—clearly justified his dismissal for "lack of proper action on your part during this six months period" (J.A. 19A) on certain specifically identified matters, as well as for "your subsequent attempt to destroy [specifically identified] original correspondence relating to it" (J.A. 19A). Appellant's "lack of responsibility and misconduct" (J.A. 19A) were pinpointed by detailed examples in the Statement of Charges to his clear neglect of duty in specified matters over a specified period; far more specifically than in *Williams*, the employee was advised in full detail of the reasons for his removal.

Moreover, unlike the situations in *Deak v. Pace*, 88 U.S. App. D.C. 50, 185 F. 2d 997, and *Money v. Anderson*, 93 U.S. App. D.C. 130, 208 F. 2d 34, upon which appellant relies (Br. pp. 8-9) there was no question here of charges being framed so broadly as to defy opportunity for refutation.³ The specific documents which formed the subject matter of the charges were here identified in meticulous detail and indeed were expressly made available for appellant's inspection (J.A. 16A); consequently any lack of specificity in the description of the documents would be fully supplied by the fact that they were available for inspection. Similarly, appellant's relationship to the matters concerned

³ In *Deak*, the employees were charged simply with such conduct as being "active in organizations known to be affiliated with the Communist Party"; in *Money*, one of the two charges against the employee was that "over a period of years" he had had "abnormal sexual relations" with teenage girls.

was carefully spelled out, as well as the charge that he had neglected to take appropriate action on these matters, and this improper activity and neglect of duty were fixed in time by reference to appellant's interview on February 23, 1953 with a representative of the Production Control Office who was seeking to determine the reasons for appellant's inaction. And since the Statement of Charges was dated March 13, 1953, only three weeks later, there is no real possibility that appellant could have forgotten about the matters referred to.

In short, the record clearly demonstrates that the employing agency, after being apprised of highly improper action on the part of appellant, proceeded promptly to draft and serve upon him a carefully drawn statement of these charges, spelling out in detail not only the allegations of improper activity, but also the background, surrounding circumstances and effect of this misconduct. Far from being tainted with the defects of the *Deak* and *Money* cases, these charges were at least as specific as those sustained by the courts in the cases cited above (*supra*, p. 11).

Finally, while, as noted by the Letter of Dismissal, appellant failed to undertake a direct answer to the charges (J.A. 13A-14A), this failure does not, of course, in itself impugn the specificity of the charges. For, while a detailed and comprehensive answer to allegedly unspecific charges can often establish their sufficiency, see, *e.g.*, *Baughman v. Green*, ——— U.S. App. D.C. ———, 229 F. 2d 33; *Mulligan v. Dunlop*, 108 F. Supp. 296 (D.D.C.), obviously the converse does not hold true. Thus in this case the employing agency was plainly entitled to a definite answer to the serious charges leveled against appellant, and appellant was given every opportunity to supply that answer, either in writing (J.A. 13A) or at a conference with his supervisors (J.A. 13A). Nevertheless, as pointed out in the Letter of Dismissal (J.A. 14A), at no time in the proceedings before the employing agency did appellant deny or make a direct answer to the charges that he had failed to take required action on certain specified matters over a six months period and that he had torn up the correspondence relating thereto,

even though this correspondence was specifically identified and made expressly available for his inspection. Instead, his response to the charges consisted solely of counter-charges against other personnel of his immediate office of a conspiracy to "frame" him (J.A. 14A).

Plainly appellant could not, by refusing to meet the specific and detailed charges against him, thereby render them invalid. These charges, on their face, were amply specific to meet the requirements of the statute. Their specificity was confirmed by the Civil Service Commission and by the court below; and, we submit, they should likewise be sustained here.

II

The Letter of Dismissal Fully Complied with Statutory Requirements.

Appellant contends further (Br. p. 7) that the Letter of Dismissal was procedurally defective under Section 14 of the Veterans' Preference Act because it contained no finding that appellant "actually destroyed the documents in question, or that his removal was for such cause as would promote the efficiency of the service." But Section 14 of the Veterans' Preference Act, set out *supra* at p. 18, requires only that no preference eligible shall be discharged "except for such cause as will promote the efficiency of the service and for reasons given in writing," and the Letter of Dismissal fully met these requirements.

As we have already made clear (Point I, *supra*, pp. 10-14), the Statement of Charges served upon appellant advised him specifically and in detail of the reasons for his proposed discharge. It charged him with "misconduct and lack of responsibility," and proceeded in explicit detail to document this charge. The Letter of Dismissal of May 28, 1953 (J.A. 12A) began by expressly stating that the decision had been made to remove him for "misconduct." The letter referred directly to the Statement of Charges (J.A. 13A), restated the reasons that the removal action was contemplated (J.A. 13A), and pointed out that appellant had had opportunity to examine the documents in-

involved, to reply to the charges, and to attend a hearing (J.A. 13A). It summarized the documents involved (J.A. 13A), recapitulated the facts upon which the removal action was based, and then stated (J.A. 13A) “* * * since you have offered no information to nullify the charges, the decision has been made to remove you from the service.” The Letter pointed out that at no time had appellant ever given a direct answer to the question whether he had attempted to destroy the documents in question, but instead had attempted to answer the charges against him only by making countercharges of conspiracy (J.A. 14A).⁴ Finally, the letter expressly stated (J.A. 14A), “*The lack of responsibility which has been demonstrated is most unfortunate in a man of your years and background, and gives rise to justified doubt as to your suitability for government employment*” [emphasis added], and concluded by explicitly advising appellant of his “right to appeal to the Civil Service Commission under Section 14, of the Veterans’ Preference Act.” (J.A. 14A). Upon his appeal, the Civil Service Commission completely sustained appellant’s dismissal.

Clearly this procedure “complied in all substance with Section 14.” *Blackmon v. Lee*, 92 U.S. App. D.C. 268, 270, 205 F. 2d 13, 14. The *Blackmon* case strongly indicates that where, as here, there is substantial compliance with statutory requirements, a letter of dismissal need not follow any specified form, and that particularly where, as here, the dismissal was for “misconduct”, a cause which in fact will promote the efficiency of the service, it need not contain, as a condition to its validity, an express finding of what is already clearly implicit, *i.e.*, that the removal action “was for such cause as will promote the efficiency of the service.”

In *Blackmon*, as in the instant case, “proposed reasons

⁴ Similarly, the formal Notification of Personnel Action appended to the Letter of Dismissal advised appellant (J.A. 12A):

At no time have you made a direct answer to the charges or offered any information sufficient to nullify the charges. It is therefore decided to remove you from the Federal Service.

for dismissal [were] furnished in detail to appellant," including reference to his rights under the Veterans' Preference Act, the letter of dismissal in each case advising appellant that his answer had been carefully considered and was not deemed satisfactory, but omitting an express finding that the dismissal was for such cause as will promote the efficiency of the service. The Civil Service Commission, however, in both cases sustained upon repeated review the procedural as well as the substantive regularity of the dismissals.⁵ This Court in *Blackmon* rejected appellant's argument that the proceedings were fatally defective under Section 14 of the Veterans' Preference Act, and held (92 U.S. App. D.C. at 269-270, 205 F. 2d at 14):

Though all question might have been eliminated by more precision in the original notification of removal we think the foregoing demonstrates that the procedures which were followed complied in all substance with Section 14.

The Letter of Dismissal in the instant case, in addition to advising appellant "that his answer had been considered and not deemed satisfactory" (*Blackmon v. Lee, supra*), contained considerable additional information. As we have shown, the Letter referred in great detail to the charges, spelled out at length the process leading to the determination of removal, and expressly found that appellant's dismissal was the result of his failure to offer any information

⁵ This Court in the *Blackmon* case points out that the Civil Service Commission made an express finding that the employee's dismissal "was for such cause as will promote the efficiency of the service." The findings of the Civil Service Commission in the instant case were not made a part of the record below. In the event that this Court is of the view that such a finding is necessary at some stage in the proceedings leading to dismissal, we respectfully request that the case be remanded to the District Court in order to permit us to introduce into the record the express findings of both the Civil Service Commission's Sixth Region and its Board of Appeal and Review that appellant's dismissal "was for such cause as will promote the efficiency of the service."

to nullify the charges, thus in plain effect concluding that they had been sustained. Appellant was charged with "misconduct and lack of responsibility" (J.A. 15A); his dismissal expressly was for "misconduct" (J.A. 12A-13A) and for demonstrated "lack of responsibility" (J.A. 14A). Under the test of substantial compliance laid down by *Blackmon* and other cases,⁶ it is plain that this lengthy and carefully considered letter amply supplied "the reasons given in writing" which the statute requires; and, of course, *Blackmon* makes perfectly clear that there was no need for the Letter itself to incorporate the statutory phrase concerning "the efficiency of the service."

Despite the fact that the Letter of Dismissal expressly rested appellant's dismissal upon his failure to meet the serious charges against him, appellant attempts to read into the Letter the same error scored by this Court in *Mulligan v. Andrews*, 93 U.S. App. D.C. 375, 211 F. 2d 28. There the employee was advised only that "Careful consideration has been given to your reply, together with the facts developed during the investigation, and the conclusion has been reached that the evidence is such as to show your unsuitability for continuance in the Internal Revenue Service." 93 U.S. App. D.C. at 377, 211 F. 2d at 30. The Court rejected this notice as failing to meet the statutory requirement (5 U.S.C. 652(a)) that the employee be discharged only for reasons given in writing (93 U.S. App. D.C. at 378, 211 F. 2d at 30):

Plainly, and we so hold, the requirement of "reasons" for removal is not satisfied in this case by the conclusion of "unsuitability" based upon vague references to appellant's answer and "facts developed during the investigation." The decision failed to disclose which of the charges contained in the notice of proposed adverse action were relied upon for removal; or, indeed, whether removal rested upon any of the charges. Under the provisions of the statute and of the regu-

⁶ E.g., *Baughman v. Green*, — U.S. App. D.C. —, 229 F. 2d 33; *Blackmar v. United States*, 128 C. Cls. 693, 120 F. Supp. 408.

lations outlined above, only findings upon such charges, specifically identified, can constitute the "reasons" required in the adverse decision.

Unlike the notice of discharge in *Mulligan*, the Letter to appellant here referred specifically and repeatedly to the charges served upon him and explicitly advised him that he was being dismissed because he was unable or unwilling to answer these very serious charges,⁷ which the agency was therefore justified in treating as sustained. Appellant's difficulties arise, not because of any doubt about what he was charged with or why he was removed, but simply because, in the face of clear and precise charges, he chose not to deal with the charges directly. Plainly, however, the administrative agency was entitled to some sort of answer to these serious allegations; and upon appellant's failure either to deny them or to attempt to explain them it was fully justified in dismissing him, as it did, precisely upon that basis.

CONCLUSION

For the foregoing reasons, we respectfully submit that the order of the District Court should be affirmed.

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OLIVER GASCH,
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⁷ Appellant himself clearly recognizes the seriousness of these charges, asserting in his brief that he "is being charged with what amounts to a crime against the United States." Appellant's Brief, p. 7.

No. 13,262

REPLY BRIEF FOR APPELLANT.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

FRANK V. DILATUSH,

Appellant,

v.

CHARLES E. WILSON, Secretary of Defense, ET AL.,
Appellees.

Appeal from the United States District Court for
the District of Columbia.

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REPLY BRIEF FOR APPELLANT.

ARGUMENT AND BRIEF

Appellees, in their Brief, place greatest emphasis on their contention that appellant did not deny the charges of "misconduct" and "lack of responsibility." This contention or argument of appellees is totally unsupported by the facts existing in this case.

The first paragraph of appellees' reply to the complaint of the agency, dated March 19, 1953, reads as follows: "The undersigned, FRANK V. DILATUSH, denies for want of knowledge all of the allegations and accusations contained in the complaint of Lt. Colonel Charles F. Burley, USAF, dated March 13, 1953, and demands strict proof thereof."

This is a complete general denial *for want of knowledge* which is a statutory denial and as strong a denial, under the law, as the circumstances of this case permit.

Under Rule 8 (b) of the Rules of Civil Procedure for the District Courts of the United States 28 U. S. C; if a party is without knowledge or information sufficient to form a belief as to the truth of an averment he shall so state, and this has the effect of a denial. Also see (*Associate Discount Corp. v. Crow* 110 F. 2d 126, 71 App. D. C. 336.)

This is the same kind of a denial that appellees filed in the within action in the United States District Court below and appellant is certainly not contending that appellees, by that pleading, have admitted the allegations of his complaint.

In reply to appellant's aforementioned denial for want of knowledge, the agency replied by supplemental letter dated April 20, 1953, as follows: "It is suggested that you comment and reply to the specific charges contained in the 13 March letter giving complete information so that I can arrive at a decision in this matter. Without such a specific and complete reply it will be impossible to make that decision."

The appellant answered by letter dated April 27, 1953, as follows: "The undersigned, Frank V. Dilatush, reiterates and reavers all of the allegations contained in his original reply of March 19, 1953, as though fully rewritten herein and makes the same a part hereof. The undersigned, therefore, continues to deny for want of knowledge all of the allegations and accusations in said complaint as modified on April 20, 1953. Having no knowledge of the alleged criminal acts, it is therefore impossible for the undersigned to give 'complete information' concerning them as requested in your letter dated April 20, 1953."

Neither the agency nor any of its administrative officers had any right to deny appellant a right which was created by statute and to which he was entitled. (*Dismuke v. U. S.* 56 S. Ct. Rep. 400, 297 U. S. 167).

Also it is noted that the agency failed to base its adverse decision against the employee on the reasons given in the notice and this is clearly contrary to law. (Letter of Dismissal 22 A-25). The reason given for the removal was stated as follows: "and since you have offered no information to nullify the charges the decision has been made to remove you from the service." This reason was not stated or even mentioned in the original complaint, dated March 19, 1953, or the supplemental complaint dated April 20, 1953. As a result and a direct consequence thereof, the appellant was never given an opportunity to reply to this new charge. Obviously, he could not offer the defense submitted above. Therefore, he could not defend himself against this new charge.

According to the Civil Service Commission's administrative interpretation of its regulations, a decision adverse to the employee can be based upon such reasons contained in the original notice of proposed adverse action. (*Mulligan v. Andrews* 211 F 2d 28, 93 U.S.App.D.C. 225)

The Civil Service Commission has issued the following interpretations of the "mandatory requirements" in the classified civil service:

"1. A final decision may not be made and the adverse action may not be taken in the circumstances outlined below. In these types of cases the agency must give the employee a new notice of proposed adverse action, and must comply with all other procedural requirements of the law and the regulation."

"a. If it is determined that adverse action should be taken for reasons other than those set forth in the notice of proposed action. A decision adverse to the employee must be based only on the reasons given in the notice which he has had an opportunity to answer. No other reasons are valid as a basis for the adverse decision." Federal Personnel Manual S 1-28 (1949).

CONCLUSION

For the reasons herein stated and also the reasons stated in appellant's original brief, judgment in this case should be reversed, and this cause remanded to the District Court for further action in accordance with the orders of this Court.

Respectfully submitted,

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